

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

IN RE SUBPOENA SERVED ON) Case No.: 7:23-mc-00020
NONPARTY TIM RUSSELL DATED)
MARCH 10, 2023)
)

MOVANT’S BRIEF IN RESPONSE TO THIS COURT’S ORDER ON APRIL 28, 2023

COMES NOW, Movant Richard Morrell (“Movant”), a Defendant in litigation pending before the United States District Court for the Eastern District of Missouri, Eastern Division (4:21-cv-293-RWS) (“Issuing Court”), and hereby provides the following short brief in response to this Court’s Order dated April 28, 2023.

This Court is correct regarding its summary of occurrences and its calculation of eighty-two miles (each way) pertaining to travel. A subpoena was served to Tim Russell with the incorrect/invalid federal witness per diem and mileage fee under Fed. R. Civ. P. 45. *See CF & I Steel Corp. v. Mitsui & Co. (U.S.A.), Inc.*, 713 F.2d 494, 496 (9th Cir. 1983).

Movant intends to serve a subpoena with the correct mileage fee. Movant respectfully requests to withdraw his motion at this time, or in the alternative that it be denied without prejudice in the event proper service does not result in Mr. Russell’s appearance at a deposition. Movant will, of course, defer to this Court’s preference regarding whether this matter should be closed or whether it should remain pending for status regarding the renewed effort of deposing Mr. Russell.

WHEREFORE, Movant respectfully requests that he be allowed leave to withdraw his motion, or in the alternative that his motion be denied without prejudice consistent with the above, and for such further relief this Court deems just and proper.

RICHARD MORRELL

By Counsel

s/ Melissa Y. York

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CERTIFICATE

I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court, to be served by operation of the Court's electronic filing system upon the following or U.S. mail for parties not registered with CM/ECF, on this 2nd day of May, 2023:

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